

## Message Text

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OES-07 SP-02 STR-07 TRSE-00 ACDA-12 NSCE-00  
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ACDA-CVANDOREN  
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BRUSSELS USEEC; VIENNA USIAEA

E.O. 11652: N/A

TAGS: ENGR, MNUC, PARM

SUBJECT: NON-PROLIFERATION LEGISLATION

REF: STATE 39449

1. THIS CABLE TRANSMITS THE LAYMAN'S SUMMARY OF THE  
NUCLEAR NON-PROLIFERATION ACT OF 1978 AS PROMISED IN  
PARA 18 OF REFTEL. THIS SUMMARY IS PROVIDED FOR YOUR  
INFORMATION AND USE AS APPROPRIATE WITH HOST GOVERNMENT  
OFFICIALS. PLEASE NOTE THAT IT IS NOT RPT NOT A LEGAL  
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DOCUMENT, AND IS INTENDED ONLY TO PROVIDE A SUMMARY OF THE  
LEGISLATION. ACCORDINGLY, THIS CABLE AND REFTEL, WHICH  
PROVIDES A MORE DETAILED ANALYSIS, SHOULD BE USED  
TOGETHER IN DISCUSSIONS ON THE LEGISLATION.

2. BEGIN TEXT:

BRIEF SUMMARY OF THE "NUCLEAR NON-PROLIFERATION ACT OF  
1978"

THE NUCLEAR NON-PROLIFERATION ACT OF 1978 IS THE MOST COMPREHENSIVE PUBLIC LAW DEALING WITH NUCLEAR EXPORTS LEGISLATED SINCE THE PASSAGE OF THE ATOMIC ENERGY ACT OF 1954. IT CONTAINS THE CONDITIONS AND CRITERIA WHICH

WILL GOVERN US COOPERATION WITH OTHER NATIONS IN THE PEACEFUL USE OF NUCLEAR ENERGY, AND SEEKS TO BALANCE CONCERN OVER THE DANGERS OF NUCLEAR PROLIFERATION WITH THE LEGITIMATE USE OF PEACEFUL NUCLEAR POWER TO MEET ENERGY DEMANDS. CENTRAL TO THE ACT IS ENCOURAGEMENT FOR UNIVERSAL RATIFICATION OF THE NON-PROLIFERATION TREATY, AND A COMPREHENSIVE SET OF CONTROLS, PROCEDURES AND INCENTIVES DESIGNED TO PROVIDE A FRAMEWORK FOR PREDICTABLE INTERNATIONAL NUCLEAR COOPERATION AND COMMERCE, TO ENHANCE THE RELIABILITY OF THE UNITED STATES AS A NUCLEAR SUPPLIER, AND TO LIMIT THE FURTHER DIFFUSION OF NUCLEAR EXPLOSIVE CAPABILITIES.

#### SUMMARY OF THE ACT

##### A. OVERVIEW

THE ACT SPECIFIES CONTROLS; PROCEDURES; AND UNCLASSIFIED

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INCENTIVES. THE PRINCIPLE CONTROLS INCLUDE:

- REQUIRING, IN ANY NEW OR AMENDED AGREEMENT, AND AFTER 24 MONTHS FROM ENACTMENT OF THE LAW FOR LICENSES UNDER EXISTING AGREEMENTS, IAEA SAFEGUARDS ON ALL NUCLEAR ACTIVITIES IN NON-NUCLEAR-WEAPONS STATES AS A CONDITION FOR CONTINUED COOPERATION WITH THE UNITED STATES;

- DEFINING IMMEDIATE EXPORT LICENSING CRITERIA FOR COOPERATION UNDER EXISTING AGREEMENTS, PENDING RENEGOTIATION;

- ESTABLISHING ADDITIONAL CRITERIA ABOVE AND BEYOND THOSE WHICH APPLY TO EXISTING AGREEMENTS FOR NEW AND AMENDED AGREEMENTS FOR COOPERATION;

- REQUIRING THE USG TO UNDERTAKE TO RENEGOTIATE ALL EXISTING AGREEMENTS TO ACHIEVE CONFORMITY WITH THE NEW CRITERIA AND CONDITIONS;

- MANDATING A CUT-OFF OF COOPERATION IF A NON-NUCLEAR-WEAPONS STATE DETONATES A NUCLEAR EXPLOSIVE DEVICE AFTER THE DATE OF ENACTMENT, OR TERMINATES IAEA SAFEGUARDS, OR MATERIALLY VIOLATES A US-COOPERATION AGREEMENT.

##### PROCEDURES

IN ADDITION TO SETTING FORTH THE CONTROLS THAT WILL APPLY IN AGREEMENTS INVOLVING US NUCLEAR COOPERATION, THE ACT ALSO INTRODUCES NEW PROCEDURES DESIGNED TO MINIMIZE DELAYS IN THE US NUCLEAR EXPORT PROCESS AND TO MAXIMIZE PREDICTABILITY OF US EXPORT POLICY. TO THESE ENDS THE ACT INCLUDES:

- A PROVISION FOR PRESIDENTIAL OVERRIDE OF NRC  
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EXPORT LICENSE DENIALS OR DELAYS IF HE JUDGES THAT IT WOULD SERIOUSLY PREJUDICE US NON-PROLIFERATION OBJECTIVES OR WOULD JEOPARDIZE THE COMMON DEFENSE AND SECURITY NOT TO DO SO;

- TIME LIMITS ON EXECUTIVE BRANCH CONSIDERATION AND NRC DISPOSITION OF EXPORT LICENSE APPLICATIONS.

INCENTIVES

FINALLY, WITH A VIEW TO FACILITATING THE DEVELOPMENT OF, AND ACCESS TO, NUCLEAR ENERGY IN A WAY THAT WOULD SUPPORT AN EFFECTIVE NON-PROLIFERATION REGIME, THE ACT CONTAINS A NUMBER OF INCENTIVE MEASURES INCLUDING:

- THE REEVALUATION OF ALL ASPECTS OF THE NUCLEAR FUEL CYCLE JOINTLY WITH OTHER NUCLEAR SUPPLIER AND RECIPIENT STATES IN THE INTERNATIONAL NUCLEAR FUEL CYCLE EVALUATION. THE OBJECTIVE OF THIS ENTERPRISE IS TO IDENTIFY TECHNOLOGICAL AND INSTITUTIONAL WAYS IN WHICH TO MEET NUCLEAR ENERGY REQUIREMENTS AND RELATED NATIONAL CONCERNS WHILE REINFORCING SHARED NON-PROLIFERATION GOALS;

- EFFORTS TO NEGOTIATE AN INTERNATIONAL NUCLEAR FUEL AUTHORITY TO ENHANCE INTERNATIONAL FUEL ASSURANCES AS WELL AS TO MEET SPENT FUEL AND WASTE DISPOSAL CONCERNS, AND THEREBY DEMONSTRATE SAFE AND EFFECTIVE WAYS TO ACHIEVE THE OBJECTIVE OF EFFICIENT AND ECONOMIC OPERATION OF NUCLEAR POWER PROGRAMS CONSISTENT WITH NON-PROLIFERATION;

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- ASSISTANCE FOR DEVELOPING COUNTRIES IN IDENTIFYING AND SECURING ACCESS TO NON-NUCLEAR ENERGY RESOURCES WHERE APPROPRIATE AND IN THE INTEREST OF MEETING DEVELOPING COUNTRY CONCERNS WITH SOCIAL AND INDUSTRIAL

DEVELOPMENT AND REDUCED EXTERNAL DEPENDENCE.

B. SIGNIFICANT PARTICULAR FEATURES

WHILE NOT PURPORTING TO BE A DEFINITIVE LEGAL STATEMENT OF THE MAJOR FEATURES OF THE ACT, FOR WHICH PURPOSE THE LEGISLATION ITSELF SHOULD BE CONSULTED, THE FOLLOWING PRESENTATION GIVES A MORE DETAILED INSIGHT INTO THE NUCLEAR NON-PROLIFERATION ACT.

I. IMMEDIATELY APPLICABLE EXPORT LICENSING CRITERIA:

IN ADDITION TO THE REQUIREMENT THAT AN EXPORT NOT BE INIMICAL TO US COMMON DEFENSE AND SECURITY, SPECIFIC CRITERIA TO BE APPLIED TO US SUPPLY ARE ESTABLISHED FOR NRC EXPORT LICENSING OF NUCLEAR FUEL AND REACTORS:

-- IAEA SAFEGUARDS;

-- NO EXPLOSIVE USE;

-- MAINTAINING ADEQUATE PHYSICAL SECURITY;

-- US CONSENT FOR RETRANSFERS (SEE FOOTNOTE);

-- US CONSENT FOR REPROCESSING (SEE FOOTNOTE);

-- APPLICATION OF ABOVE CRITERIA TO MATERIALS OR EQUIPMENT PRODUCED THROUGH ANY TRANSFERRED SENSITIVE NUCLEAR TECHNOLOGY.

BEGIN FOOTNOTE: (EXPORTS TO GROUPS OF NATIONS ARE UNCLASSIFIED

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EXEMPTED FROM THE RETRANSFER AND REPROCESSING REQUIREMENTS FOR 24 MONTHS -- WITH POSSIBLE ONE-YEAR EXTENSIONS -- IF THEY AGREE TO RENEGOTIATE.)

II. FULL-SCOPE SAFEGUARDS:

-- IAEA SAFEGUARDS ON ALL PEACEFUL NUCLEAR ACTIVITIES IN NON-NUCLEAR WEAPONS STATES WILL BE REQUIRED, AFTER 24 MONTHS FOLLOWING ENACTMENT, AS A CONDITION OF CONTINUED US EXPORT. THIS EXPORT LICENSING CRITERION MAY BE WAIVED BY THE PRESIDENT UNDER EXCEPTIONAL CIRCUMSTANCES, SUBJECT, HOWEVER, TO CONGRESSIONAL VETO BY CONCURRENT RESOLUTION.

III. CRITERIA FOR NEW AND AMENDED AGREEMENTS FOR COOPERATION:

IN ADDITION TO THE PROVISIONS REQUIRED TO SATISFY

THE IMMEDIATE EXPORT CRITERIA, THE FOLLOWING PROVISIONS  
MUST BE INCLUDED IN NEW AND AMENDED AGREEMENTS:

-- IAEA SAFEGUARDS OF INDEFINITE DURATION AND,  
AS A CONTINUING CONDITION OF US SUPPLY, ON  
ALL PEACEFUL NUCLEAR ACTIVITIES IN NON-NUCLEAR-  
WEAPONS STATES;

-- RETURN TO THE US OF NUCLEAR MATERIALS IF A  
RECIPIENT NON-NUCLEAR-WEAPONS STATE DETONATES  
A NUCLEAR EXPLOSIVE DEVICE OR TERMINATES OR  
ABROGATES AN AGREEMENT PROVIDING FOR SAFEGUARDS;

-- US CONSENT FOR ANY ENRICHMENT AND TO THE  
RETRANSFER AND/OR REPROCESSING OF SPENT FUEL,  
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REGARDLESS OF ITS SOURCE, IF IRRADIATED IN  
US-SUPPLIED REACTORS;

-- US APPROVAL OF FACILITIES FOR STORAGE OF  
WEAPONS-USABLE MATERIAL; AND

-- APPLICATION OF ALL OF THE ABOVE CONDITIONS TO  
ANY NUCLEAR MATERIALS PRODUCED THROUGH THE  
USE OF TRANSFERRED SENSITIVE NUCLEAR TECHNOLOGY.

ONE OR MORE OF THESE REQUIREMENTS MAY BE WAIVED BY THE  
PRESIDENT IF US NON-PROLIFERATION OBJECTIVES OR NATIONAL  
SECURITY WOULD OTHERWISE BE JEOPARDIZED. NEW OR AMENDED  
AGREEMENTS MUST LIE BEFORE THE CONGRESS FOR 60 DAYS  
TOGETHER WITH ACDA NUCLEAR PROLIFERATION ASSESSMENT  
STATEMENTS AND THEN WILL COME INTO EFFECT, UNLESS THE  
CONGRESS PASSES A CONCURRENT RESOLUTION DISAPPROVAL.

IV. EVENTS REQUIRING TERMINATION OF US NUCLEAR SUPPLY  
AFTER THE DATE OF ENACTMENT:

-- EXPORTS TO ANY NON-NUCLEAR-WEAPONS STATE WILL  
BE TERMINATED IF THAT STATE:

- DETONATES A NUCLEAR EXPLOSIVE DEVICE;

- TERMINATES OR ABROGATES IAEA SAFEGUARDS;

- IS FOUND BY THE PRESIDENT TO HAVE MATERIALLY  
VIOLATED IAEA SAFEGUARDS;

- USES NUCLEAR MATERIAL IN ACTIVITIES OF  
DIRECT SIGNIFICANCE TO THE ACQUISITION OF  
EXPLOSIVE DEVICES.

-- EXPORTS WILL BE TERMINATED TO ANY STATE OR  
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GROUP OF STATES THAT:

- VIOLATES ITS AGREEMENT FOR COOPERATION OR  
OTHER TERMS OF SUPPLY;

- ASSISTS A NON-NUCLEAR-WEAPONS STATE IN  
ACTIVITIES; OF DIRECT SIGNIFICANCE TO THE  
ACQUISITION OF NUCLEAR EXPLOSIVES;

- ENTERS INTO AN AGREEMENT FOR TRANSFERRING  
REPROCESSING CAPABILITIES EXCEPT IN  
CONNECTION WITH INFCE OR A SUBSEQUENT  
INTERNATIONAL ARRANGEMENT TO WHICH THE  
US SUBSCRIBES.

V. SUBSEQUENT ARRANGEMENTS (UNDER EXISTING AND NEW  
AGREEMENTS) FOR REPROCESSING AND HANDLING OF  
SPENT FUEL:

-- US CONSENT FOR REPROCESSING OR TRANSFER OF  
SEPARATED PLUTONIUM MAY ONLY BE GIVEN IF IT  
WILL NOT RESULT IN A SIGNIFICANT INCREASE IN  
THE RISK OF PROLIFERATION. IN MAKING THIS  
EVALUATION, FOREMOST CONSIDERATION WILL BE  
GIVEN TO WHETHER THE REPROCESSING OR RETRANSFER  
WILL TAKE PLACE UNDER CONDITIONS THAT ENSURE  
TIMELY WARNING TO THE US OF ANY DIVERSION  
WELL IN ADVANCE OF THE TIME AT WHICH A NON-  
NUCLEAR-WEAPONS STATE COULD TRANSFORM THE  
DIVERTED MATERIAL INTO A NUCLEAR EXPLOSIVE  
DEVICE. THERE IS AN EXCEPTION FOR REPROCESSING  
AT FACILITIES THAT PROCESSED POWER REACTOR  
FUEL PRIOR TO ENACTMENT OF THIS LEGISLATION  
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BUT THE US MUST ATTEMPT TO ENSURE THE SAME  
STANDARD IS APPLIED TO REPROCESSING AT THESE  
FACILITIES AS WELL;

-- ANY PROPOSED RETURN OF FOREIGN SPENT FUEL TO  
THE US WOULD BE SUBJECT TO REVIEW BY THE  
EXECUTIVE BRANCH AND THE CONGRESS.

VI. LICENSING OF NUCLEAR COMPONENTS NOT SPECIFICALLY  
COVERED IN THE LEGISLATION:

-- THE NRC IS DIRECTED TO DEFINE COMPONENTS WHICH

ARE OF SPECIAL RELEVANCE FOR NUCLEAR EXPLOSIVES.  
THESE WOULD BE LICENSED BY NRC WHICH WOULD  
DETERMINE WHETHER THE EXPORT WAS INIMICAL TO  
THE COMMON DEFENSE AND SECURITY AND THE LICENSE  
WOULD ALSO BE SUBJECT TO THE FOLLOWING  
STANDARDS:

- IAEA SAFEGUARDS;
- NO EXPLOSIVE PLEDGE;
- NO RETRANSFERS WITHOUT US CONSENT.

VII. EXPORT LICENSING PROCEDURES WITH A VIEW TO  
EXPEDITING THE EXPORT LICENSING PROCESS:

THE ACT

- REQUIRES THE NRC TO ADOPT PROCEDURES WHICH  
WILL BE EXCLUSIVE BASIS FOR HEARINGS BEFORE  
THE COMMISSION;
- PERMITS THE NRC TO ISSUE LICENSES FOR  
MULTIPLE SHIPMENTS OR GIVE EXPEDITED TREAT-  
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MENT TO FOLLOW-ON LICENSES IF NO MATERIAL  
CHANGE IN CIRCUMSTANCES HAS OCCURRED;

- ALLOWS THE PRESIDENT TO AUTHORIZE AN EXPORT  
AFTER AN NRC NEGATIVE DECISION, SUBJECT TO  
CONGRESSIONAL REVIEW AND VETO;
- MANDATES THE EXECUTIVE BRANCH AND THE NRC  
NORMALLY TO ACT ON LICENSES WITHIN 60 DAYS;  
AND
- LIMITS GOVERNMENT-TO-GOVERNMENT TRANSFERS  
(WITHOUT NRC LICENSES) TO SMALL QUANTITIES  
OR TO EMERGENCY SITUATIONS IN ORDER TO  
ACHIEVE UNIFORMITY IN ALL TRANSACTIONS.

VIII. FUEL ASSURANCES INITIATIVES:

- THE SECRETARY OF ENERGY IS DIRECTED TO PROCEED  
WITH THE CONSTRUCTION AND OPERATION OF  
EXPANDED URANIUM ENRICHMENT CAPACITY;
- THE PRESIDENT IS DIRECTED TO STUDY THE NEED  
FOR ADDITIONAL US ENRICHMENT CAPACITY FOR  
FOREIGN AND DOMESTIC NEEDS AND FURTHER TO  
REPORT TO CONGRESS ON THE DESIRABILITY OF

INVITING FOREIGN PARTICIPATION IN NEW US  
URANIUM ENRICHMENT FACILITIES;

-- THE PRESIDENT IS ALSO GIVEN A MANDATE TO  
BEGIN THE NEGOTIATION OF AN INTERNATIONAL  
NUCLEAR FUEL AUTHORITY TO PROVIDE FUEL  
SERVICES, AND INTERNATIONAL SPENT-FUEL  
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REPOSITORIES;

-- THESE AND OTHER RELATED FUEL ASSURANCES ARE  
INTENDED TO APPLY TO COUNTRIES THAT ADHERE  
TO POLICIES DESIGNED TO PREVENT FURTHER  
PROLIFERATION, AND TO BRING CONTINUED USE  
AND DEVELOPMENT OF NUCLEAR ENERGY INTO  
HARMONY WITH INTERNATIONAL SECURITY THROUGH  
NON-PROLIFERATION.

END TEXT.

3. ACTUAL TEXT OF LEGISLATION FOLLOWS BY AIRGRAM. VANCE

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## Message Attributes

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